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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/477,954	01/05/2000	JONATHAN LEE SULLIVAN		9970
7590 06/09/2008 Brian Kinnear Holland & Hart LLP 555 Seventeenth Street Suite 3200 Denver, CO 80202			EXAMINER NGUYEN, KHAI MINH	
			ART UNIT 2617	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte: JONATHAN SULLIVAN

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Application No. 09/477,954  
Technology Center 2600

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Mailed: June 6, 2008

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Before DALE M. SHAW *Chief Appeals Administrator*.  
SHAW, *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on March 10, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

**APPEAL BRIEF**

Appellant filed an Appeal Brief dated May 2, 2007, in response to a Final Rejection mailed September 25, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

The “Summary of claimed subject matter” appearing on pages 3-4 is deficient because it does not separately map independent claims 5 and 10 to the specification.

Correction is required.

According to 37 CFR § 41.37(c)(v), an Appeal Brief must include the following:

(v) ***Summary Of Claimed Subject Matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. < While reference to page and line number of the specification \*\*>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

**EVIDENCE APPENDIX AND RELATED PROCEEDINGS APPENDIX**

A further review of the Appeal Brief filed May 2, 2007, reveals that the “Evidence appendix” and “Related proceedings appendix” is missing.

Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office’s requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

**CONCLUSION**

Accordingly, it is

**ORDERED** that the application is returned to the Examiner to:

1) hold the Appeal Brief filed May 2, 2007 defective, as required by 37 CFR § 41.37(d);

2) notify the Appellant to submit a response which corrects the Appeal Brief's Summary of Claimed Subject Matter and includes the required appendices under 37 CFR § 41.37(c)(1)(v), 37 CFR § 41.37(c)(1)(ix) and (x);

3) acknowledge and consider any response" submitted by Appellant to correct the Appeal Brief; and

4) for such further action as may be appropriate.

DMS/tsj

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